

REMARKS

The following Remarks are made with respect to the Examiner's Statement of Reasons for Allowance, at pages 2-3 of the Notice of Allowability ("Statement").

Rule 1.104(e) and MPEP 1302.14 permit the Examiner to set forth a written statement of reasons for allowance under certain circumstances. MPEP 1302.14 expressly provides that "(t)he statement is not intended to necessarily state all the reasons for allowance or all the details why claims are allowed and should not be written to specifically or impliedly state that all the reasons for allowance are set forth." While the Examiner's Statement sets forth at least one reason for allowance, Applicant expressly reserves the right to assert in any future proceedings regarding this application or any patent(s) issuing directly or indirectly therefrom, the allowability and/or allowance of the claim(s) on the basis of any other reason(s) consistent with the prosecution history of the application.

Additionally, MPEP 1302.14 requires the statement to be "accurate". However, the Examiner's statement is not accurate, because the Examiner misrepresents the teachings of U.S. Patent No. 6,698,020 to Zigmond *et al.* ("Zigmond"). The Examiner states that Zigmond "teaches selecting the pre-existing signature profile having the highest correlation value over the correlation threshold, and updating selected pre-existing signature profile to include the session profile..." (see Statement, page 3). However, Zigmond does not teach a "signature profile" or a "session profile." "Signature profile" and "session profile" are terms and concepts used in the Applicant's application, not in Zigmond. Furthermore, Zigmond does not describe structures that correspond to Applicant's disclosure concerning "signature profile" and "session profile." Therefore, the Examiner's contention that that Zigmond teaches these concepts is inaccurate.

Furthermore, Zigmond does not teach a "correlation threshold" or the "updating" described by the examiner. Instead, Zigmond discloses that "the means for identifying the viewer includes statistics collection location 61 in combination with computer-executable instructions for deriving or making a best estimate of the identity of the

viewer based on current and past viewing habits” (column 9, line 66 – column 10, line 3). Zigmond further discloses that “the viewer and system information may be updated automatically in order to characterize the viewing habits of the viewers” (column 10, lines 39-41). Since Zigmond only discloses “deriving or making a best estimate,” the Examiner’s statement that Zigmond “teaches” selecting “the highest correlation value over the correlation threshold” is incorrect and misleading. The generalized statements of Zigmond alone cannot fairly said to teach the precise statements recited by the Examiner.

Accordingly, the Statement is factually incorrect in at least the aforesaid instances, and such inaccuracies are contrary to both the spirit of the Rule and the express provisions of the MPEP.

Additionally, Rule 1.104(e) limits the Examiners’ ability to provide a statement of reasons for allowance to some degree. The rule states, in pertinent part:

If the examiner believes that the record of the prosecution as a whole does not make clear his or her reasons for allowing a claim or claims, the Examiner may set forth such reasoning.

Consequently, where the statement of reason(s) does not clarify the reason(s) for allowance over the prosecution record (or actually further confuses the record), the statement violates Rule 1.104(e). As noted above, since the Examiner’s Statement misrepresents the teachings of Zigmond, the Examiner’s Statement does not further clarify the record. Accordingly, since the Examiner’s Statement violates Rule 1.104(e), it is of no legal effect.

For the foregoing reasons, Applicant therefore denies acquiescence to the Statement and further denies being bound by any negative inferences that may flow therefrom in any future proceedings regarding this application or any patent(s) issuing directly or indirectly therefrom.

Respectfully submitted,

Date: 5/9/07 By: Andrew W. Spicer
Andrew W. Spicer
Registration No. 57,420
Technology, Patents & Licensing, Inc.
2003 South Easton Road, Suite 208
Doylestown, PA 18901
Telephone: 267-880-1720
Customer No. 27832